

Technical Assistance - Chapter 4 – Appointments and Status

Prepared by the Division of Human Resources in the Department of Personnel & Administration July 2003.

General

Nepotism

Q. Can an agency implement a policy against nepotism?

A. Several agencies have established internal policies that discourage direct reporting relationships among relatives. Please refer to the legal decision in these interpretive guidelines and to CRS 24-34-402(1).

This summary of an administrative law judge decision regarding nepotism (Court of Appeals Case 86CA 1547) is not necessarily binding but may be persuasive in future appeals.

The Colorado Court of Appeals affirmed a Personnel Board decision concerning nepotism. This case involved an employee who grieved an appointing authority's refusal to appoint him from an eligible list to a position where his father would supervise him. The Personnel Board upheld the appointing authority's decision not to appoint the employee and the employee subsequently appealed the Board's decision to the Court of Appeals.

In affirming the Board's decision, the Court rejected the employee's argument that his relationship with his father does not relate to his merit and fitness under the constitution and therefore constitutes a non-merit factor. The Court noted, "Considering the real problems that may be presented by the employment of close relatives, we conclude that a close familial relationship between an employment applicant and a prospective supervisor relates to that applicant's fitness for the position within the meaning of the Constitution."

The Court further found that if, as in this case, "...there is no showing that an appointing authority has applied a non-nepotism policy in an uneven or discriminatory manner, then an appointing authority may validly consider a familial relationship in determining which of the three highest applicants on an eligible list is to be selected for an available position. Moreover, the appointing authority may choose not to appoint an applicant whose close familial relationship to another employee could give rise to later charges of favoritism, irrespective of whether there is any evidence that the specific relative involved would in fact engage in such favoritism."

Moving Expenses

Q. Can moving expenses be paid to a new appointee from outside the state personnel system?

A. The State Controller's Fiscal Rule and CRS 24-50-134 govern moving expenses. Per information from the State Controller's Office, the statute only addresses current state

employees who are required to move. Because the new hire is not in the state personnel system yet, moving expenses can be paid. The State Controller's Office encourages departments to be consistent with moving expenses for both new and current employees. Additional questions should be referred to the State Controller's Office.

Methods

Q. Does an agency have latitude to consider both transfer applicants and individuals on an eligible list?

A. Yes. Both are methods that an appointing authority may use to fill a position.

Reinstatement

The five-year limitation on reinstatement and reappointment was removed effective April 1, 1992 and the length of reinstatement privileges is now unlimited for employees who resign or demote after that date. Employees who resigned or demoted prior to April 1, 1992 were bound to the five-year limitation.

Q. If an employee who is eligible for reinstatement in a former class is hired from an eligible list for a position from a different class and is dismissed from that class, is the employee still eligible to be reinstated to the former class?

A. Yes. The dismissal affects eligibility for reinstatement only for the class from which dismissed.

An employee who reinstates to a lower class can be reappointed to a position in the former higher class or related class when such a position becomes available.

Conditional or Provisional Appointments

Two requirements must be met before a provisional appointment can be made.

- There cannot be an eligible list for the class; and,
- A provisional appointment is only allowed when a bona fide attempt has been made to see if a current certified employee in the state personnel system would take the position.

The six-month limitation on provisional appointments applies to the individual, not to the job. It is not possible to hire an individual in one class on a provisional appointment for a period of up to six months and then make a new provisional appointment of the same individual to another class for another six months, both within the same 12-month period.

Temporary Appointments

Although temporary appointments are not subject to the competitive exam process, a temporary employee must be qualified for the position or class.

A temporary employee may work no more than six months in a twelve-month period. This 12-month period is not defined as calendar or fiscal year but instead must be considered as a rolling 12-month period.

Q. If an employee works less than full time, can the temporary employment continue for more than six months in a 12-month period?

A. No, the six-month limitation applies regardless of whether the employee works full time or part time.

Q. Does a provisional appointment count toward the maximum six-month period?

A. Yes, because a provisional appointment is a type of temporary appointment.

Q. How is the six months in a twelve-month period counted for temporary employees who work continuously?

A. Agencies may count the six months in a twelve-month period from the actual date the employee begins work for temporary employees who work continuously. For example, a temporary employee who begins working June 15 may work through December 14.

One day worked during a month continues to count as a full month for temporary employees with multiple “on and off” appointments. For example, a temporary employee who works June 15 through July 10 and then does not work again until August 1 has the June 15 through July 10 period counted as two months of the six-month period.

EMPLOYEE STATUS

Probationary Status

For information concerning discipline of probationary employees, please refer to the technical assistance, *Corrective and Disciplinary Actions*, available on the web.

Probationary employees may transfer if approved by the appointing authority and may also be promoted while in probationary status. In either case, the probationary period is continued from the date of the initial appointment. For example, a probationary Administrative Assistant II who promotes after completing 10 months of the probationary period without being certified will remain in probationary status for only an additional two months before becoming certified in the new Administrative Assistant III class.

Managers may want to certify a probationary employee in the lower class before promotion if a short time remains in the probationary period. In this situation, early certification often makes sense because it allows a manager to place an employee in trial service status for up to six months in the new higher class.

Q. Can an agency retroactively grant certified status to an employee who resigns or is laid off while in probationary status?

A. No. The question of granting certified status should be raised and, if approved, granted before the effective date of resignation or layoff.

Q. Can an employee be required to serve more than one year in probationary status?

A. Not if the employee is at work continuously. The probationary period is intended to give the appointing authority a period of 12 months from the date of permanent hire to observe the employee's performance. The probationary period may be extended for periods of paid leave, leave without pay, or short-term disability leave.

Q. What is the status of a probationary employee who transfers?

A. The remaining period of time on probation carries over to the new position when a probationary employee transfers.

Q. What change in status should be made on promotion of an employee in probationary status to a higher class?

A. If a probationary employee is promoted and the appointing authority elects to certify the employee in the lower class prior to promotion, the employee is granted trial service status. If the appointing authority elects not to certify the employee prior to promotion, the promoted employee is continued in probationary status in the new class for the remainder of the 12-month probationary period.

Trial Service Status

Q. Can an employee who resigns while in trial service status reinstate to the trial service class?

A. No. An employee can only reinstate (or be reappointed) to a class in which certified.

Certified Status

Q. What is the status of a certified employee who self-initiates a transfer?

A. The employee remains certified. Effective August 8, 2001, CRS 24-50-122 was amended so that trial service does not apply to certified employees who transfer irrespective of whether the transfer is involuntary or self-initiated. This is consistent with the fundamental principle that an employee holds only one status at a time.

Q. What is the meaning of the term “initial period of appointment” in CRS 24-50-137(4)?

- A. It was the intent of the statute to grant leave from a position in the state personnel system only for the first appointment to an exempt position. Thus, this subsection is applicable only to the first appointment of an employee in the state personnel system to a non-classified position, whether made by the governor or other elected or appointed official.

Appointments by the governor to exempt executive director positions are subject to senate approval. If a governor is reelected and wishes to continue the appointment of an executive director or a successor wishes to continue such an appointment made by the predecessor, the continuation is not subject to reconfirmation. Therefore, the “initial period of appointment” to such a position continues until terminated by the incumbent governor.

Some appointments to non-classified positions that are made by appointed officials are through contracts that have termination dates. For such appointments, the termination date is the end of the first (“initial”) contract. Appointments to non-classified positions are typically made in this method in the Department of Education, by the Commissioner of Higher Education, and by presidents of the two-year colleges.

Some appointments to non-classified administrative positions are made on appointment forms that show no termination dates. They continue until the position is abolished or the incumbent is dismissed or appointed to another non-classified position.

Appointments to faculty positions at four-year colleges are typically made without termination dates, and the incumbent becomes “tenured” after three to five years of employment. If a certified employee accepts appointment to an exempt faculty position at one level, such as assistant professor, and later accepts promotion to a higher level, such as associate professor, acceptance of the promotion is a second appointment, terminating the initial appointment.

An appointing authority may grant leave-without-pay for extended periods of time. Putting an employee on leave-without-pay for periods in excess of the initial term may solve any difficulties with the specifics of the statute.

Substitute Appointment

Q. Can a substitute position be established at a lower class than the position for which it is substituting?

- A. Yes. Any appointments to substitute positions must meet the criteria that substitute appointments are established only for training purposes or for leaves of absence.

Every attempt is made to keep this information updated. For more information, contact your agency human resources office. Subsequent revisions to rule or law could cause conflicts in this information. In such a situation, the laws and rules are the official source upon which to base a ruling or interpretation. This document is a guide, not a contract or legal advice.